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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.

Washington, D.C. 20463

2005 AUG -2 P 4: 34

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 5523

DATE COMPLAINT FILED: 8/27/04

DATE OF NOTIFICATION: 9/2/04

DATE ACTIVATED: 2/22/05

EXPIRATION OF SOL: 8/1/09

COMPLAINANT:

Campaign Legal Center

RESPONDENT:

Local 12, United Assoc. Plumbers &  
Gasfitters Bldg. Corp.

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 441b

2 U.S.C. § 441d

11 C.F.R. § 110.11

11 C.F.R. § 114.4(c)(6)(i)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

Complainant, the Campaign Legal Center ("complainant" or "CLC"), alleges that respondent, Local 12, United Assoc. Plumbers & Gasfitters Bldg. Corp. ("respondent" or "Plumbers Local 12"), advocated the election of Democratic presidential candidate John Kerry and solicited contributions for his campaign to the general public through its website in violation of section 441b of the Federal Election Campaign Act of 1971, as amended ("the Act"). The CLC also claims that respondent's web-based solicitation failed to include a disclaimer in violation of 2 U.S.C. § 441d. Respondent does not deny the allegations.

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While this matter presents sufficient grounds to investigate whether respondent violated 2 U.S.C. § 441b, because the subject communications were disseminated on such a limited basis, as evidenced by the light traffic to this local union website, this Office recommends that the Commission find reason to believe that Plumbers Local 12 violated 2 U.S.C. § 441b but take no further action and send an appropriate admonishment letter instructing the respondent that such communications must be limited to its membership. This Office also recommends that the Commission find no reason to believe that Plumbers Local 12 violated 2 U.S.C. § 441d and close the file.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Background

Respondent Plumbers Local 12, which is headquartered in Boston, Massachusetts and has approximately 1,200 members, is the local affiliate of the United Association of Journeymen and Apprentices of the Plumbing, Pipefitting, and Sprinkler Fitting Industry of the United States and Canada.<sup>1</sup> See Plumbers Local 12 Website, <http://www.plumbersandgasfitterslocal12.org> (last accessed April 8, 2005); Response at 1. Its website is open to the general public. *Id.*

Complainant's Exhibit 1 is a copy of the Plumbers Local 12's homepage as it existed on or about August 26, 2004. The homepage includes a campaign sticker/button that identifies Plumbers Local 12 along its top and in its center states "Support John Kerry President." The sticker/button includes the Kerry campaign's World Wide Web address ([www.JohnKerry.com](http://www.JohnKerry.com)) and near the bottom states that it was "paid for by Plumbers Local 12." *Id.* Additional wording

<sup>1</sup> The United Association of Journeymen and Apprentices of the Plumbing, Pipefitting, and Sprinkler Fitting Industry of the United States and Canada has a separate segregated fund, the United Association Political Education Fund ("UA-PEC"), which is registered with and reports to the Federal Election Commission.

1 at the bottom of the button/sticker is indecipherable.<sup>2</sup> Underneath this sticker/button is a picture  
2 of Presidential candidate John Kerry at a campaign rally with Plumbers Union Local 12-Boston  
3 campaign signs directly behind him.<sup>3</sup> *Id.* Plumbers Local 12's homepage contains other  
4 statements advocating the election of John Kerry and the defeat of George W. Bush in the 2004  
5 Presidential election:

6 UA General President Martin J. Maddaloni recently communicated directly to  
7 every member of the United Association regarding the importance of electing a  
8 Democratic President. He requested every member make a personal contribution  
9 to the Presidential Candidate John Kerry. It is critically important to the future of  
10 organized labor that we defeat George W. Bush – the policies his Administration  
11 have promoted are an attack on all working men and women in this county.

12 We need your financial support to elect a Democratic President who will restore  
13 the respect for working people in our country. (emphasis in original) *Id.*

14  
15  
16 The text then includes the following request:

17 Please make a \$25 donation to:

18 *John F. Kerry for President, Inc.*  
19 *901 15<sup>th</sup> Street N.W.*  
20 *7<sup>th</sup> Floor*  
21 *Washington, DC 20005*

22  
23 The text also includes instructions to "code the check and envelope DM\_UA, which  
24

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<sup>2</sup> CLC also asserts that the campaign sticker on the homepage included a link to the Kerry campaign's website. Because Plumbers Local 12 removed the sticker/button from its website homepage shortly after receiving the complaint, it is impossible to determine whether the Kerry website address was hyperlinked. Response at 1.

<sup>3</sup> As of April 5, 2005, the Plumbers Local 12 had moved this picture and posted it along with three other pictures on its website's Political Endorsements subpage under the heading, "Plumbers Local 12 is out in force at Massachusetts Senator and Presidential Candidate John Kerry's January 25<sup>th</sup> rally in Nashua, NH." See Plumbers Local 12 website, <http://www.plumbersandgasfitterslocal12.org> (last accessed April 5, 2005).

1 allows the campaign to identify all contributions from UA members nationally.”<sup>4</sup> *Id.* The  
2 homepage finishes with a quote from Congressman William Delahunt explaining “why we must  
3 send President Bush back to Texas.” *Id.*

4 **B. Endorsement, Express Advocacy, and Solicitation of Contributions**

5 Plumbers Local 12 does not deny any of the allegations in the complaint. Respondent  
6 admits that its website is open to the public, but asserts that “it is primarily used by” its 1,200  
7 members to keep abreast of union activities. Plumbers Local 12 claims that it is unable to  
8 determine when it first posted the subject political material on the website, but states that it  
9 removed the material upon receiving the complaint, which was dated August 27, 2004.<sup>5</sup> In an  
10 effort to retrieve general statistics relating to how often its political endorsements subpage is  
11 visited, respondent tracked visits to 18 pages on its website for a three month period, from June  
12 8, 2004 through September 9, 2004. Respondent stated that this tracking project indicated that  
13 out of a total of “3,588 pages” visited during these three months, there were 64 visits to the  
14 political endorsement subpage. According to respondent, these 64 visits, some of which were  
15 visits by search engine indexing programs and not individuals, represented only 1.78% of all  
16

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<sup>4</sup> Arguably, the language of the solicitation suggests that the union intended to solicit its membership. Such an intent, however, does not obviate the fact that the solicitation was ultimately directed to and accessible by the general public.

<sup>5</sup> A visit to the Plumbers Local 12 website on April 5, 2005 confirmed that respondents had removed the specific text and the campaign sticker that are at issue in this matter from the website. However, as noted in footnote 3, the picture of Presidential candidate John Kerry that appeared with the text and campaign sticker on the copy of respondent's homepage submitted with the complaint was moved to a different section of the website, the political endorsements subpage.

1 traffic on the website during that period.<sup>6</sup> Further, Plumbers Local 12 states that it has no  
2 information concerning whether any visitors to the site actually contributed to the Kerry  
3 campaign.

4 Based on the available information, it appears that respondent made express advocacy  
5 communications and solicited contributions from the general public via its website homepage.<sup>7</sup>  
6 The Plumbers Local 12's endorsement of Democratic presidential candidate John Kerry was  
7 visible to all homepage visitors and therefore cannot automatically be considered a *de minimis*  
8 distribution outside the restricted class.<sup>8</sup> At the same time, we do not know the value of these  
9 prohibited contributions to or expenditures on behalf of the Kerry campaign. In particular, we do  
10 not know exactly how much it cost to run the website or how much money, if any, was actually  
11 raised for the Kerry campaign as a result of the Plumbers Local 12 solicitation.

<sup>6</sup> Respondent refers to 3,588 pages visited but presumably meant "hits" or "page hits." Also, respondent appears to claim that the subject material was found in the political endorsements subpage of the website. From the URL on the copy provided by the CLC however, it appears that the subject material was in fact on the website's homepage, as evidenced by its URL, <http://www.plumbersandgasfitterslocal.12.org.index/html>. See Complaint, Exhibit 1. Thus, the percentage of hits on the political endorsements subpage is not a relevant gauge for whether and how often the prohibited communications were accessed. Given that respondent does not state whether the homepage was one of the 18 pages on its website whose traffic it tracked, it is not possible to reach any firm conclusion as to how many times the subject political communications were actually viewed during the three month period measured. See Response at 1.

<sup>7</sup> Pursuant to 2 U.S.C. § 441b(a), labor organizations are prohibited from making contributions or expenditures from their general treasury funds in connection with any federal election. Contributions and expenditures include in-kind contributions. Section 441b(a) permits labor unions to issue communications containing express advocacy to, as well as solicit contributions from, its restricted class, but not to or from the general public. The restricted class includes the union's executive, administrative personnel and members, as well as the families of these groups. 11 C.F.R. § 114.5(g)(2).

<sup>8</sup> Pursuant to 11 C.F.R. § 114.4(c)(6), a labor organization may announce an endorsement at an appearance of the candidate, candidate's representative or party representative or in a publication directed to its restricted class. No more than a *de minimis* number of published endorsements may be issued beyond the restricted class. The labor organization may also announce that it has made an endorsement through a press release or conference, as long as the release or notice is to the organization's usual media contacts. 11 C.F.R. § 114.4(c)(i). Complainant does not specifically allege a violation of this regulation and the facts do not support a finding that the communications at issue qualify as a formal endorsement.

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1           However, an investigation into this matter is not warranted because the information  
2 gathered thus far suggests that the costs associated with and the impact of the subject  
3 communications were quite limited. It is likely that the expenditures associated with the express  
4 advocacy and solicitation website communications were negligible. And, the website's size, lack  
5 of sophistication and relatively small amount of traffic that may well have come mostly from its  
6 members suggest that the impact of the apparent violation was minimal. Finally, while we do  
7 not know with certainty how many persons beyond the restricted class viewed the subject  
8 communications, there is no evidence that this material was otherwise published or disseminated  
9 outside of the website.

10           Accordingly, this Office recommends that the Commission find reason to believe that  
11 Local 12, United Assoc. Plumbers & Gasfitters Bldg. Corp. violated 2 U.S.C. § 441b, but take no  
12 further action and send an admonishment letter to instruct the respondent to use an intranet  
13 vehicle to communicate on political issues with its restricted class as discussed in AO 2000-7  
14 (Alcatel USA).<sup>9</sup>

15           **C.    Disclaimer**

16           Plumbers Local 12 was not required to include on its website the disclaimer required  
17 under 2 U.S.C. § 441d. Based on current regulations, disclaimer notices are required for express  
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<sup>9</sup>       See MUR 5281 (American Muslim Council) (Commission took no further action and sent admonishment to non-profit corporation that spent prohibited funds on e-mail solicitation that failed to include disclaimer); MUR 5147 (Spartanburg Republicans) (Commission took no further action and sent admonishment to corporation that spent prohibited funds on express advocacy radio advertisement that failed to include disclaimer, where the advertisement aired five times and cost \$225).

advocacy and solicitations communications that are "public communications."<sup>10</sup> 11 C.F.R.

§ 110.11. The term "public communications" is defined to exclude most communications over the Internet, such as the Plumbers Local 12 website that is at issue in this case. 11 C.F.R.

§ 100.26. Accordingly, this Office recommends that the Commission find no reason to believe that Local 12, United Assoc. Plumbers & Gasfitters Bldg. Corp. violated 2 U.S.C. § 441d and close the case.

### III. RECOMMENDATIONS

1. Find no reason to believe that Local 12, United Assoc. Plumbers and Gasfitters Bldg. Corp. violated 2 U.S.C. § 441d.
2. Find reason to believe that Local 12, United Assoc. Plumbers and Gasfitters Bldg. Corp. violated 2 U.S.C. § 441b.
3. Take no further action against Local 12, United Assoc. Plumbers and Gasfitters Bldg. Corp. and send a letter of admonishment.
4. Approve the appropriate letters.

<sup>10</sup> In *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004) (granting in part and denying in part the respective parties' motions for summary judgment), the district court invalidated the content standard of the coordinated communications regulation, including the provision referencing the definition of "public communication," which excludes communications over the Internet. The court subsequently denied the Commission's petition for a stay pending appeal, but confirmed that the regulations remained in effect. See *Shays v. FEC*, Civ. No. 02-1984 (CKK), slip op. at 2 (D.D.C. Oct. 19, 2004). In light of the court's decision regarding the definition of "public communication," at 11 C.F.R. § 100.26, the Commission approved a notice of proposed rulemaking seeking public comment on issues related to Internet communications. See *Internet Communications*, 70 Fed. Reg. 16967 (2005) (to be codified at 11 C.F.R. Parts 100, 110, 114) (April 4, 2005).

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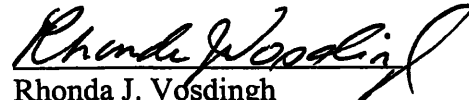
5. Close the file.


Lawrence H. Norton  
General Counsel

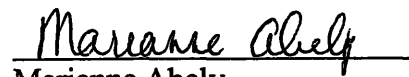
Date

8/2/05

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